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Strata Property Act – Depreciation Reports

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Introduction

In December of 2009 the *Strata Property Amendment Act* (Bill 8) was adopted. Section 15 of Bill 8 amended section 94 of the *Strata Property Act*, establishing the new requirement for depreciation reports. Regulations adopted on December 13, 2011 brought section 94 of the *Strata Property Act* into effect.

Therefore, as of December 13, 2011, unless exempted, all BC strata corporations must obtain a depreciation report. Strata corporations that are not exempt must obtain their depreciation reports by December 13, 2013 and updated depreciation reports must be obtained every 3 years.

Public Policy

The public policy reasons behind the requirement for depreciation reports arise out of the view that planning is necessary for each strata corporation to protect the common property and common assets of the strata corporation. The theory is that maintenance is the best way for the strata corporation to reduce the costs related to its common property and assets. Long term planning and maintenance will prolong the life cycle of the building systems, allow strata corporations to plan renewals on a non-emergency basis and reduce premature failures of systems and the costly resultant damage.

The depreciation report is intended as a long term planning tool for maintenance and renewals of common property and common assets that a strata corporation is required to maintain and repair. With their adoption in BC, depreciation reports will now be required in six Canadian provinces.

What Is A Depreciation Report?

A depreciation report includes:

- a) a physical inventory of commonly owned assets;
- b) an evaluation based on an on-site visual inspection;
- c) all repair, renewal and maintenance costs anticipated for each asset for a 30 year planning horizon;
- d) factors used to calculate costs (i.e. inflation, taxes, interest rates); and
- e) the current balance of the contingency reserve fund and a minimum of 3 cash flow funding models.



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Why Get A Depreciation Report?

The advantages and disadvantages of having a depreciation report prepared include:

Advantages:

- a) to be in compliance with the *Strata Property Act*;
- b) to fulfill the fiduciary duty of the Strata Council;
- c) to provide the owners with a plan for the establishment and maintenance of adequate funding for current and future repairs and replacements;
- d) to equitably distribute the proportionate share of component costs to each owner, regardless of their period of ownership;
- e) if implemented appropriately, the plan should reduce the risk of requirements for future special assessments;
- f) prolong the life of building components through planned maintenance;
- g) result in improved condition and maintenance of the building components, which will help to sustain resale values and reduce overall long-term repair and replacement costs;
- h) facilitate sales and financing by strata lot owners;
- i) encourage better planning for major repairs to common property; and
- j) improve disclosure of the condition of common property and reduce the number of financial “surprises” for buyers of strata properties.

Disadvantages:

- a) it is nearly impossible for a strata council or a committee of owners to complete the required depreciation report on their own;
- b) hiring a “qualified person” to complete a depreciation report every 3 years is a major expenditure for a strata corporation; and
- c) backlogs and waiting lists should be anticipated as it will be a challenge for the limited number of qualified professionals in BC to complete up to 14,000 such reports by December 2013.

Exemption and Waivers

As of December 13, 2011, unless exempted, all BC strata corporations, including bare land strata corporations, must obtain a depreciation report. Strata corporations that are not exempt must obtain their depreciation reports by December 13, 2013 and updated depreciation reports must be obtained every 3 years. However, there are two exemptions provided in the *Strata Property Act* which will allow strata corporations to avoid the depreciation report requirement.

Strata corporations with fewer than 5 strata lots are not required to obtain depreciation reports, nor are they required to hold a $\frac{3}{4}$ vote to exempt themselves from the requirement.

A strata corporation with more than 4 strata lots can release themselves from the obligation to obtain a depreciation report by a resolution adopted by a $\frac{3}{4}$ vote at an annual general meeting or a special general meeting.

If strata corporations opt to exempt themselves by way of a $\frac{3}{4}$ vote, they have 18 months from their last successful exemption vote to either hold another vote providing for a further exemption or obtain a depreciation report. This means a strata corporation not wanting a depreciation report will have to waive its requirement at each annual general meeting. In practice this means that, if votes to exempt are being held annually at annual general meetings, there would still be about 6 months left to get a depreciation report done if the $\frac{3}{4}$ vote did not pass in a given year.

By permitting strata corporations to opt out of obtaining a depreciation report with a $\frac{3}{4}$ vote the legislature has significantly decreased the effectiveness of its revisions to the *Strata Property Act*. The likely course for the many strata corporations that do not currently carry out any long term planning and maintenance, is that they will seek to continue to ignore long term planning by obtaining a $\frac{3}{4}$ vote. Thus the dividing a line between well maintained and neglected strata corporations will continue.

The $\frac{3}{4}$ vote threshold may also present governance problems for a strata corporation. A strata corporation may consider a motion to waive the requirement for a depreciation report, and have a majority of the owners approve the motion, but not get the required $\frac{3}{4}$ vote, thus forcing them to proceed and commission a depreciation report. The commission of the depreciation report will either require a positive $\frac{3}{4}$ vote if it is to be funded by way of a special levy, or a simple majority approval if it is to be funded through the annual budget. However, as a majority of owners have rejected the need for a depreciation report, the owners may refuse to approve the necessary funding. Therefore, it is feasible that the minority of the owners, who want a depreciation report, will block a successful waiver vote, while the majority of the owners who do not favour commissioning the report will be able to block the funding of the report, thus creating a stalemate that will not be easily resolved.

Different strata corporations take different positions as to the appropriate method for funding the cost of obtaining a depreciation report. The operating fund is intended to pay for routine expenses of a strata corporation and the courts have generally held that extraordinary expenses (expenses occurring less frequently than once a year or which do not normally occur) should be paid out of the contingency reserve fund or be funded by a special levy, both of which require a $\frac{3}{4}$ vote. In other cases, the courts have held that repair expenditures that will continue over several years can be incorporated into the budget's operating fund which only needs a majority vote to be approved by the owners. As a depreciation report needs to be prepared and then updated every 3 years, my view is the cost of a depreciation report should be funded by a special levy with a $\frac{3}{4}$ vote. However, until we have a court decision, it will not be clear whether or not this is the correct view.

Existing Reports

If a strata corporation has already obtained a report that complies with the provisions of section 94 and the *Strata Property Regulations*, they will not need to obtain a new depreciation report by December 31, 2013, but such report will have to be updated every 3 years unless waived by a $\frac{3}{4}$ vote.

Who Can Prepare Depreciation Reports?

Given the wide range of strata properties, strata corporations have been given enormous flexibility in selecting the person or consultant best-suited to analyze their particular property.

The depreciation report must be prepared by a qualified person. A "qualified person" is defined by the *Strata Property Act* as any person who has the knowledge and expertise to understand the individual components, scope and complexity of the strata corporation's common property, common assets and those parts of a strata

lot or limited common property, that the strata corporation is responsible to maintain or repair under the *Strata Property Act*, and to prepare a depreciation report in compliance with the *Strata Property Act*.

The primary groups of professionals generally considered to be qualified are either professional engineers, or other professionals including members of the Appraisal Institute of Canada Accredited Appraisers (AACI's) who have completed the Real Estate Institute of Canada Reserve Fund Planning program, which provides the professional designation of CRP (Certified Reserve Planner). CRP designated professionals conduct Functional Reserve Fund Studies. A functional reserve fund study is described as a financial document, and incorporates both a physical analysis and a financial analysis of the strata corporation, as required by the BC legislation.

The Strata Property Regulations require that the depreciation report provide the report author's name, qualifications, whether they have errors and omissions insurance and their relationship to the strata corporation.

The Depreciation Report

A. Supporting Documentation

In order to assist a qualified person in preparing the depreciation report, a strata corporation will have to provide the qualified person with access to the strata corporation's records and documents. At a minimum, a copy of the registered strata plan, any registered bylaw amendments, and any information relating to the condition of the property should be provided. Other documents that the qualified person may need to review include:

- Operating budget;
- Current balance sheet, including the contingency reserve fund balance and any investments and assets;
- General ledger;
- Copies of invoices relevant to operations and repairs;
- Current insurance certificate or insurance appraisal;
- Any reciprocal easements/service agreements/air parcel agreements;
- Any leases and licenses (enterphone systems, parking garage use);
- Any agreements granting third party use of and access to the strata property;
- Prints, plans and drawings – architectural, structural, mechanical, electrical, fire protection and other systems;
- Any prior investigation reports: maintenance, repair, investigation etc.;
- Annual fire inspection report;
- Maintenance manuals;
- Maintenance logs;
- Registered strata plan and any amendments;



- Registered bylaws and any amendments;
- Any bylaws where the strata corporation has taken responsibility for the maintenance and repair of part of a strata lot;
- Any information and bylaws relating to sections;
- Any registered allocations of limited common property;
- Any alteration agreements where an owner has taken responsibility for the cost of the maintenance or renewal of the alteration; and
- Lawsuits or arbitration decisions that impact property use, maintenance repair or obligation.

B. What is included in the Depreciation Report?

The depreciation report must include all of the following:

- a) a physical component inventory and evaluation of the common property and common assets;
- b) a summary of repairs and maintenance work for common expenses respecting the common property and common assets that usually occur less often than once a year or that do not usually occur;
- c) a financial forecasting section outlining the anticipated maintenance, repair and replacement costs for common expenses that usually occur less often than once a year or that do not usually occur, projected over 30 years; and
- d) the name of the person from whom the depreciation report was obtained and a description of
 - i. that person's qualifications,
 - ii. the error and omission insurance, if any, carried by that person, and
 - iii. the relationship between that person and the strata corporation.

C. Physical Inventory and Evaluation

The physical inventory and evaluation must:

- a) be based on an on-site visual inspection of the site and, where practicable be conducted by the person preparing the depreciation report,
- b) include a description and the estimated service life for 30 years of those items that comprise the common property, the common assets and those parts of a strata lot or limited common property that the strata corporation is responsible to maintain or repair under the *Strata Property Act*, the strata corporation's bylaws or an agreement with an owner, including, but not limited to, the following items:
 - i. the building's structure;
 - ii. the building's exterior, including roofs, roof decks, doors, windows and skylights;
 - iii. the building's systems, including the electrical, heating, plumbing, fire protection and security systems;

- iv. common amenities and facilities;
 - v. parking facilities and roadways;
 - vi. utilities, including water and sewage;
 - vii. landscaping, including paths, sidewalks, fencing and irrigation;
 - viii. interior finishes, including floor covering and furnishings;
 - ix. green building components;
 - x. balconies and patios, and
- c) identify common property and limited common property that individual strata lot owners, and not the strata corporation, are responsible to maintain and repair.

D. Financial Forecast

The financial forecasting section must include:

- a) the anticipated maintenance, repair and replacement costs for common expenses that usually occur less often than once a year or that do not usually occur, projected over 30 years, beginning with the current or previous fiscal year of the strata corporation;
- b) a description of the factors and assumptions, including interest rates and rates of inflation, used to calculate the costs;
- c) a description of how the contingency reserve fund is currently being funded;
- d) the current balance of the contingency reserve fund minus any expenditures that have been approved but not yet taken from the fund; and
- e) at least 3 cash-flow funding models for the contingency reserve fund relating to the maintenance, repair and replacement over 30 years, beginning with the current or previous fiscal year of the strata corporation.

The cash-flow funding models may include any one or more of the following:

- a) balances of, contributions to and withdrawals from the contingency reserve fund;
- b) special levies; and
- c) borrowings.

If a strata corporation contributes to the contingency reserve fund based on a depreciation report, those contributions become part of the contingency reserve fund and may be spent for any purpose permitted under section 96 of the *Strata Property Act*.



Implementation of the Depreciation Report's Recommendation

Strata corporations are not required to fund the recommendations in the depreciation report. Strata corporations are also not required to fund their contingency reserve fund above the minimum previously required by the *Strata Property Act*.

Section 6.1 of the *Strata Property Regulations* as recently amended, provides that the amount of the annual contribution to the contingency reserve fund for a fiscal year, other than the fiscal year following the first annual general meeting, must be determined as follows:

- a) if the amount of money in the contingency reserve fund at the end of any fiscal year after the first annual general meeting is less than 25% of the total amount budgeted for the contribution to the operating fund for the fiscal year that has just ended, the annual contribution to the contingency reserve fund for the current fiscal year must be at least the lesser of:
 - i. 10% of the total amount budgeted for the contribution to the operating fund for the current fiscal year, and
 - ii. the amount required to bring the contingency reserve fund to at least 25% of the total amount budgeted for the contribution to the operating fund for the current fiscal year;
- b) if the amount of money in the contingency reserve fund at the end of any fiscal year after the first annual general meeting is equal to or greater than 25% of the total amount budgeted for the contribution to the operating fund for the fiscal year that has just ended, additional contributions to the contingency reserve fund may be made as part of the annual budget approval process after consideration of the depreciation report, if any, obtained under section 94 of the *Strata Property Act*.

With the amendments to the *Strata Property Act*, the owners may now approve with a simple majority vote, "additional contributions" to the contingency reserve fund over and above the minimum required. Previously an annual $\frac{3}{4}$ vote was required to make contributions to the contingency reserve fund above 25% of the operating budget.

There are however no consequences under the *Strata Property Act* for a strata corporation that obtains depreciation report, but takes no steps to implement its recommendations. The reaction of the marketplace may be the only real consequence in these situations.

Disclosure of Depreciation Reports

Effective December 13, 2011, a strata corporation's most recent depreciation report must be attached to any Information Certificate (Form B) provided by that strata corporation.

In addition to the depreciation report, as of March 1, 2012, the following items must be attached to an Information Certificate:



- a) the rules of the strata corporation,
- b) the current budget of the strata corporation, and
- c) the rental disclosure statement filed pursuant to section 139 of the *Strata Property Act*.

By January 1, 2014 strata corporations will be required to provide additional information to prospective purchasers regarding how parking stalls and storage lockers are allocated to the strata lot.

Impact of Requirement for Depreciation Reports

A. Strata Corporations

The requirement for depreciation reports, may impact the market value of strata lots. A thorough depreciation report indicating that a strata corporation has a plan to address the long term maintenance requirements of their building, will likely improve the value and marketability of the strata lots in the building. A depreciation report that identifies significant deferred maintenance issues of looming major capital expenditures, will obviously negatively impact the value and marketability of the strata lots.

Strata corporations may be liable if they fail to attach a current depreciation report to an Information Certificate (Form B) provided to a purchaser or a mortgagee. Purchasers of strata lots are entitled to rely on the information in the Information Certificate (Form B) (see sec. 59(5) of the *Strata Property Act*). If a strata corporation fails to attach accurate information to the Form B Information Certificate, they may be bound by the inaccurate information provided to the purchaser. Similar liability may arise to a potential mortgagee who relies on an inaccurate information certificate.

B. Strata Agents

At a minimum, strata agents must advise their clients as to the requirement for a depreciation report under the *Strata Property Act*. It is anticipated that most strata agents will as a matter of course, recommend to their clients that they obtain depreciation reports. Strata agents may open themselves up to risk of liability if they advise their strata corporation clients not to get a depreciation report. It is better left to the strata council and the owners to make this important decision.

A strata agent may also be liable for situations in which they have recommended the wrong qualified person. Strata agents should provide a list of qualified persons and assist the strata corporation in choosing a qualified person, but the strata agent should not make the final decision.

The strata agent, even if otherwise qualified, should not be the one preparing a depreciation report for the strata corporation.

Strata agent should ensure that the qualified person is provided with all relevant information in the possession of the strata agent and the strata corporation or at least facilitate access to such records.

Strata agents may also be liable if they fail to attach a current depreciation report to an Information Certificate (Form B). Purchasers of strata lots are entitled to rely on the information in the information certificate (see sec. 59(5) of the *Strata Property Act*). If strata agent fails to attach an accurate information certificate, the strata corporation may be liable to the purchaser, and the strata corporation may in turn, make a claim against the strata agent. Similar liability may arise to a mortgagee who relied on an inaccurate information certificate.

Strata agents should review the draft depreciation report to determine whether there are any obvious inaccuracies or errors in the depreciation report.

Strata agents may limit all such liability by good business practices and well-crafted language in the service agreement made between the strata corporation and the strata agent.

C. Mortgages

Based on experience in other jurisdictions, it is anticipated that mortgagees will begin to require a copy of a current depreciation report when considering mortgage applications. Without a current depreciation report, mortgagees may refuse to consider, let alone approve a mortgage application.

Lenders may still refuse to approve a mortgage where they are provided with a current depreciation report, but where no steps have been taken to implement the report's recommendations. Alternatively, they may factor into the amount they are prepared to loan, a sum sufficient to pay the strata lot's proportionate share of a potential future special levy.

This will make it more difficult for prospective owners to purchase strata lots. This in turn may reduce the fair market value of the strata lots, negatively impacting existing owners.

D. Developers

Commissioning Depreciation Reports

There are no specific developer's obligations set out in the *Strata Property Act* regarding depreciation reports. Thus as the legislation currently stands, a developer building a project due to be completed in late 2013, would have to have a depreciation report in place by December 13, 2013, to be in compliance with the *Strata Property Act*. If they do not have one, the strata corporation would be in breach of the *Strata Property Act* and such breach would presumably have to be disclosed under the *Real Estate Development Marketing Act*.

Currently there is no requirement that a developer marketing a new project provide purchasers with a depreciation report. Time will tell if the provision of a depreciation report by the developer will become a marketing advantage.

When choosing to commission a depreciation report as part of their project development and marketing, great care should be taken by any developer not to make any additional representations as to the accuracy of the depreciation report, or the expected life span of such items, as that may open up the developer to future warranty claims.

Inventory

The Province has been involved in a consultation process with interested parties including developers, regarding proposed regulatory changes to the *Strata Property Act* related to the developer's obligation to provide depreciation reports. The Province was considering requiring depreciation reports be provided as early as when the strata plans were being registered in the Land Title Office. It has been suggested to government that regulations be adopted that will provide that the depreciation report need only be obtained within 6 months after the 2nd annual general meeting. In this scenario, developers would be required to provide documentation to facilitate the preparation of the depreciation report (such as an inventory of capital items for the building), but will not be responsible for obtaining a depreciation report. This inventory will assist the strata corporation in preparing a depreciation report in the future. Strata Corporations would still have the option to decide at their 1st or 2nd annual general meeting not to commission the depreciation report.

Assuming such a regulation is adopted; developers will probably not have to adjust their proposed estimated budget for their project, as the cost of the depreciation report will be deferred until after the 2nd annual general meeting. It is anticipated that any regulation adopted to address this issue, will address the timing of depreciation reports for phased developments.

Developers currently developing projects should discuss the development of a capital items inventory with their architects, engineers and other consultants.

Provision of Depreciation Report by the Developer

Effective December 13, 2011, a strata corporation's most recent depreciation report must be attached to any Information Certificate (Form B) provided by that strata corporation including any Information Certificate provided by the developer. If such a depreciation report does not exist, that would have to be disclosed in the Information Certificate (Form B).

Older Projects

When preparing engineering or capital requirement reports for their building an investor owning all of the strata lots in a building, should consider, ensuring that they comply with the depreciation report requirements, so that they can be used as a depreciation report in any future marketing of their project. There is no specific exemption from the requirement for obtaining a depreciation report for investors owning all the strata lots in a building, and any investor owner wanting to be in technical compliance with the *Strata Property Act* will have to adopt the required resolution if they wish to waive the requirement for a depreciation report.

“Underwater Buildings” and Redevelopment

Implementation of a depreciation report may not be possible in some strata corporations who have insufficient operating and contingency reserve funds. This is a reality as some buildings have rapidly increasing capital costs, with owners not having sufficient income to pay large special levies thereby making units in the project unsellable.

Many parties have speculated that with any softening in the current condominium market, a number of strata lots in older projects will be “under water”. If a building requires substantial capital repairs as described in the depreciation report, combined with a general reduction in market value, many owners may find themselves owning a strata lot worth less than their mortgage and may be unable to finance any potential strata fee levy.

Winding Up a Strata Corporation

It was always anticipated that older strata corporations would reach the end of their expected life and the owners would want or need to redevelop their site. The *Strata Property Act* has always contained provisions allowing for the cancellation of a strata plan and the winding up of a strata corporation.

The new requirement for depreciation reports may speed up the process for many older buildings. The cost to repair the building or to bring it in compliance with depreciation reports may exceed any reasonable value of the units even after they are repaired. This may encourage owners to either demolish the building and rebuild a new strata building or sell to a developer who will do the same.

Section 272 of the *Strata Property Act* provides a mechanism to facilitate the winding up of a strata corporation to allow its redevelopment by the existing owners or its sale to a developer. Section 272 provides the mechanism for a strata plan to be cancelled and have all of the owners become tenants in common on a single title. However to do so, the strata corporation must adopt a unanimous resolution at an annual general or special general meeting.

Such a process is generally very challenging for developers and has rarely been successful, as in most cases there will be a few people for whatever their reasons (reasonable or irrational) who refuse to agree to the sale.



Typically such a proposal only works where a developer is in a position to offer a sum greater than the fair market value, such as situations where the current building is built under the permitted density or when a rezoning is possible to increase the density.

Assuming the votes are there to support a unanimous resolution, the process of wind up of the strata corporation is still extremely complex and time consuming.

Some owners may try to hold out, to obtain a higher purchase price for their unit. Developers will typically only offer all purchasers a price based on the relative fair market value of the units. Developers may however be required to offer a “premium” to any holdout owner. In some other transactions the other owners pay the premium to the holdout owner. Any developer entering in such process must think long and hard as to the appropriate strategy to adopt before embarking on the process.

Unanimous Vote

The “winding up” of a strata corporation requires a “unanimous vote” which is defined as a vote in favour by all votes of all eligible voters. This requires all of the following to vote in favour:

all registered owners of all strata lots, except those for which a tenant has the right to vote under s. 147 or 148, and those for which a mortgagee has the right to vote under s. 54(c) if the resolution is in respect of insurance, maintenance, finance, or other matters affecting the security for the mortgage;

- a) all tenants who have been assigned the right to vote under s. 147 or 148;
- b) all mortgagees whose mortgages give them the right to vote, if the resolution is in respect of insurance, maintenance, finance, or other matters affecting the security of the mortgage, and if they have given at least three days’ written notice of their intention to vote;
- c) under s. 56, persons holding proxies for one of the above with respect to the resolution; and
- d) court appointed voters under s. 58.

Abstentions are effectively counted as votes against a unanimous vote resolution, and every strata lot has a vote with respect to a unanimous vote resolution regardless of a bylaw adopted under s.53(2) of the *Strata Property Act* suspending voting rights of strata lot owner who has not paid the strata fees.

If two or more persons are entitled to vote with respect to a strata lot, all must vote in favour for a unanimous vote resolution to pass. Because of the impracticality of obtaining unanimous approval at a general meeting, a unanimous resolution often takes the form of a written consent resolution.

Failure to obtain a Unanimous Vote

In situations where there is 95 percent approval for the winding up of the strata corporation, but not 100 percent support, application may be made to the courts pursuant to section 52 the *Strata Property Act* to dispense with the requirement for unanimous consent in certain circumstances.

The following preconditions must be met for an application to Supreme Court to proceed under s.52:

- a) the strata corporation has 10 or more strata lots;
- b) dissenting votes total less than five percent of the strata corporation’s votes, or no more than one strata lot, whichever is less; and



- c) the owners pass a $\frac{3}{4}$ vote resolution authorizing the court application.

The court may order that the vote proceed as if the dissenting voters had no vote, if it is satisfied the resolution is in the best interest of the strata corporation and would not unfairly prejudice the dissenting voters. The courts have not interpreted s.52 to date, but it seems likely that the case law under s.164 (preventing or remedying unfair acts) would have some bearing on the question of whether a resolution is unfairly prejudicial to a voter. The use of the term “voter” implies that a tenant or mortgagee, as well as an owner, may be entitled to compensation under s.52.

Note that this option is not available when there are 9 or fewer strata lots in a strata corporation, which would include a significant number of strata corporations.

A number of groups have encouraged the provincial government to consider reducing the voting threshold for the Section 52 application to a lower percentage, while retaining the requirement to get court approval when the unanimous resolution is not achievable.

A strata corporation should proceed with caution under s.52, as it may be required to pay money to a dissenting voter. If the court finds in favour of the strata corporation, it may make “any other order it considers just, including an order that the strata corporation offer to purchase a strata lot owner by a dissenting voter at its fair market value or that the strata corporation otherwise compensate a dissenting voter”.

Strata Property Act SBC Chap. 43

Depreciation Report

94 (1) In this section, “qualified person” has the meaning set out in the regulations.

(2) Subject to subsection (3), a strata corporation must obtain from a qualified person, on or before the following dates, a depreciation report estimating the repair and replacement cost for major items in the strata corporation and the expected life of those items:

(a) for the first time, the date that is 2 years after the coming into force of this section **[This section came into December 13, 2011 and thus the report must be obtained by December 13, 2013];**

(b) if the strata corporation has, before or after the coming into force of this section, obtained a depreciation report that complies with the requirements of this section, the date that is the prescribed period after the date on which that report was obtained **[3 years];**

(c) if the strata corporation has, under subsection (3)(a), waived the requirement under this subsection to obtain a depreciation report, the date that is the prescribed period **[18 months]** after the date on which the resolution waiving the requirement was passed.

(3) A strata corporation need not comply with the requirement under subsection (2) to obtain a depreciation report on or before a certain date if

(a) the strata corporation, by a resolution passed by a 3/4 vote at an annual or special general meeting within the prescribed period, waives that requirement, or

(b) the strata corporation is a member of a prescribed class of strata corporations. **[4 or fewer units]**

(4) A depreciation report referred to in subsection (2) must contain the information set out in the regulations.

Strata Property Regulations

Contingency reserve fund contribution in first annual budget

3.4 For the purposes of section 93 of the Act, the amount of the annual contribution to the contingency reserve fund for the fiscal year following the first annual general meeting must be determined as follows:

- a) if the amount of money in the contingency reserve fund at the time of the first annual general meeting is less than 25% of the estimated operating expenses for the 12 month period set out in the interim budget, the annual contribution to the contingency reserve fund under the first annual budget must be at least 10% of the total amount budgeted for the contribution to the operating fund for the 12 month period covered by that budget;
- b) if the amount of money in the contingency reserve fund at the time of the first annual general meeting is at least 25% of the estimated operating expenses for the 12 month period set out in the interim budget, additional contributions to the contingency reserve fund may be made as part of the annual budget approval process after consideration of the depreciation report, if any, obtained under section 94 of the Act,



Strata Contributions to Contingency Reserve Fund

6.1 For the purposes of section 93 of the Act, the amount of the annual contribution to the contingency reserve fund for a fiscal year, other than the fiscal year following the first annual general meeting, must be determined as follows:

- a) if the amount of money in the contingency reserve fund at the end of any fiscal year after the first annual general meeting is less than 25% of the total amount budgeted for the contribution to the operating fund for the fiscal year that has just ended, the annual contribution to the contingency reserve fund for the current fiscal year must be at least the lesser of
 - i. 10% of the total amount budgeted for the contribution to the operating fund for the current fiscal year, and
 - ii. the amount required to bring the contingency reserve fund to at least 25% of the total amount budgeted for the contribution to the operating fund for the current fiscal year:
- b) if the amount of money in the contingency reserve fund at the end of any fiscal year after the first annual general meeting is equal to or greater than 25% of the total amount budgeted for the contribution to the operating fund for the fiscal year that has just ended, additional contributions to the contingency reserve fund may be made as part of the annual budget approval process after consideration of the depreciation report, if any, obtained under section 94 of the Act.

Depreciation Report

6.2 (1) For the purposes of section 94 of the Act, a depreciation report must include all of the following:

- a) a physical component inventory and evaluation that complies with subsection (2);
- b) a summary of repairs and maintenance work for common expenses respecting the items listed in subsection (2) (b) that usually occur less often than once a year or that do not usually occur;
- c) a financial forecasting section that complies with subsection (3);
- d) the name of the person from whom the depreciation report was obtained and a description of
 - i. that person's qualifications,
 - ii. the error and omission insurance, if any, carried by that person, and
 - iii. the relationship between that person and the strata corporation;
- e) the date of the report;
- f) any other information or analysis that the strata corporation or the person providing the depreciation report considers appropriate.

(2) For the purposes of subsection (1) (a) and (b) of this section, the physical component inventory and evaluation must

- a) be based on an on-site visual inspection of the site and, where practicable, of the items listed in paragraph (b) conducted by the person preparing the depreciation report,

- b) include a description and estimated service life over 30 years of those items that comprise the common property, the common assets and those parts of a strata lot or limited common property, or both, that the strata corporation is responsible to maintain or repair under the Act, the strata corporation's bylaws or an agreement with an owner, including, but not limited to, the following items:
- i. the building's structure;
 - ii. the building's exterior, including roofs, roof decks, doors, windows and skylights;
 - iii. the building's systems, including the electrical, heating, plumbing, fire protection and security systems;
 - iv. common amenities and facilities;
 - v. parking facilities and roadways;
 - vi. utilities, including water and sewage;
 - vii. landscaping, including paths, sidewalks, fencing and irrigation;
 - viii. interior finishes, including floor covering and furnishings;
 - ix. green building components;
 - x. balconies and patios, and
- c) identify common property and limited common property that the strata lot owner, and not the strata corporation, is responsible to maintain and repair.

(3) For the purposes of subsection (1) (c), the financial forecasting section must include

the anticipated maintenance, repair and replacement costs for common expenses that usually occur less often than once a year or that do not usually occur, projected over 30 years, beginning with the current or previous fiscal year of the strata corporation, of the items listed in subsection (2) (b),

- a) a description of the factors and assumptions, including interest rates and rates of inflation, used to calculate the costs referred to in paragraph (a),
- b) a description of how the contingency reserve fund is currently being funded,
- c) the current balance of the contingency reserve fund minus any expenditures that have been approved but not yet taken from the fund, and
- d) at least 3 cash-flow funding models for the contingency reserve fund relating to the maintenance, repair and replacement over 30 years, beginning with the current or previous fiscal year of the strata corporation, of the items listed in subsection (2) (b).

(4) For the purposes of subsection (3) (e), the cash-flow funding models may include any one or more of the following:

- a) balances of, contributions to and withdrawals from the contingency reserve fund;



- b) special levies;
- c) borrowings.

(5) If a strata corporation contributes to the contingency reserve fund based on a depreciation report, the contributions in respect of an item become part of the contingency reserve fund and may be spent for any purpose permitted under section 96 of the Act.

(6) For the purposes of section 94 (1) of the Act, “qualified person” means any person who has the knowledge and expertise to understand the individual components, scope and complexity of the strata corporation’s common property, common assets and those parts of a strata lot or limited common property, or both, that the strata corporation is responsible to maintain or repair under the Act, the strata corporation’s bylaws or an agreement with an owner and to prepare a depreciation report that complies with subsections (1) to (4).

(7) The following periods are prescribed:

- a) for the purposes of section 94 (2) (b) of the Act, 3 years;
- b) for the purposes of section 94 (2) (c) of the Act, 18 months;
- c) for the purposes of section 94 (3) (a) of the Act, the one year period immediately preceding the date on or before which the depreciation report is required to be obtained.

(8) A strata corporation is prescribed for the purposes of section 94 (3) (b) of the Act if and for so long as there are fewer than 5 strata lots in the strata plan.

For more information, please contact [Edward L. Wilson](#) at 604.631.9148.

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